

TESTIMONY OF WILLIAM W. MILLAR
PRESIDENT
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
BEFORE THE
HOUSE COMMITTEE ON GOVERNMENT REFORM
ON THE OVERSIGHT OF PUBLIC TRANSPORTATION AGENCIES

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SUBMITTED BY

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APTA is a nonprofit international association of over 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

Mr. Chairman and members of the Committee, on behalf of the American Public Transportation Association (APTA), thank you for this opportunity to testify on effective oversight of public transportation agencies around the country.

ABOUT APTA

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OVERVIEW

Mr. Chairman, effective oversight of public transit systems is accomplished in a number of ways but principally is provided by transit boards, by federal, state and locally required reports and audits, and by internal audit departments. In some cases an independent inspector general also provides oversight. In addition, state, county and city governments play an oversight role when they make state or local funds available to a transit system.

In general, transit boards are charged to serve as the policy makers of a transit system, and provide strategic guidance, legal and fiduciary oversight, and customer representation. Very generally the board provides broad oversight, while ongoing administration and management of the transit system is the responsibility of its CEO and staff. Day to day oversight is provided at the transit system by its staff and, more specifically, by an auditor, chief financial or legal officer, or some combination of those roles. In some larger transit systems there is a separate and independent inspector general function. Finally, essentially all public transit systems are recipients of federal transit assistance and are subject to a variety of oversight requirements in that regard as well as to such requirements at the state and local level.

ROLE OF TRANSIT BOARD

Mr. Chairman, a 2002 report from the Transportation Research Board's Transit Cooperative Research Program discusses public transit board oversight and governance (TCRP Report 85 - *Public Transit Board Governance Guidebook*). It surveyed a number of board members and transit chief executive officers about transit board issues. As the TCRP report forms the basis of much of my discussion of board oversight, I would respectfully request that it be made a part of the record.

Any consideration of oversight of a local public transit agency begins with its policy board of directors. The use of such boards dates to the passage of federal mass transit legislation in the 1960s and the change from private ownership of public transit to public governance as states and regions enacted legislation to establish public transit authorities or transit districts. Transit boards became the legal governing bodies of these newly formed public transit systems.

The selection process for transit board directors varies from organization to organization. Local elected officials representing the political entities that established the transit systems appointed the earliest boards. Members typically represented specific political jurisdictions, and appointing entities were governors, mayors, city councils, or regional jurisdictions. According to the TCRP report, appointment by elected officials is the predominant trend in transit board selection methods.

Board size has remained consistent over the past twenty-five years. Usually specified in enabling legislation or bylaws, transit board size ranges from 5 to 23 members. Medium-sized boards - 7 to 10 members - are the most popular. Most transit boards are comprised of 9 members.

Transit boards are charged to serve as the policy makers of a transit system. Transit governance also includes providing strategic guidance, legal and fiduciary oversight, and customer representation. Boards frequently engage outside experts. For example, boards hire independent external auditors both to review the accuracy of their financial accounting but also to review internal controls and related issues. While each transit system's local enabling legislation provides the board authority to govern, it generally fails to provide specific details on the process of that governance. Given this lack of specificity, in some instances there may be a lack of clarity as to the boundaries of the board's authority versus day-to-day responsibilities of the CEO and staff and thus the lines between management and the board can become blurred.

Because of this, APTA's Transit Board Member Committee has developed guidance for its board members in the form of a Handbook for Transit Board Members. The handbook points out in discussing the board's policy function that policy has been defined as a general rule or principle, or a statement of intent or direction, which provides guidance to administrators in reaching decisions with respect to the particular matters entrusted to their care. Management is the day-to-day administration of that guidance, and its application to the events and situations that are a part of transit operations. Policy is the making of the rule; management is its application to the everyday activities. Policy provides the direction; management makes it work.

The handbook also describes the relationship between the board and the general manager, and notes that the overriding goal of a transit board is to enhance the effectiveness of the system. To this end, the board acts in a "big picture" way, establishing the mission and setting policies. The CEO/general manager is held accountable for running the day-to-day operations.

The TCRP report emphasizes the board's "big picture" role and found that board members spend the most time on the following activities presented in rank order:

- § Establishing service policies/standards;
- § Fiduciary oversight/budget approval;
- § Strategic planning;
- § Overall fiscal control; and
- § Setting organizational priorities.

FEDERAL OVERSIGHT OF TRANSIT AGENCIES

Because most, if not all, of APTA transit system members are recipients of federal grant assistance from the U.S Department of Transportation's Federal Transit Administration, their internal management and oversight functions address a number of federal reports, requirements and audits in addition to any state, local and/or county requirements flowing from the expenditure of state or local funds.

In brief, FTA oversight requires each such grantee recipient of funds responsible for administration and management of the federal grant to be in compliance with the grant agreement and applicable FTA circulars and regulations. The grantee is also responsible for funds that "pass through" to a sub-recipient. FTA monitors grants to confirm that grantees establish and follow procedures that are reasonable and comply with FTA requirements. Grantees must submit annual certifications and assurances of compliance with federal requirements. Annual independent audits for recipients of urbanized area formula program funds and triennial reviews give FTA an opportunity to verify the grantee's certifications and assurances. The grantee's responsibilities include actions that:

- § Provide continuous administrative and management direction of project operations.
- § Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress.
- § Assure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards.
- § Maintain the project work schedule agreed to by FTA and the grantee and constantly monitor grant activities to assure that schedules are met and other performance goals are being achieved.
- § Keep expenditures within the latest approved project budget.
- § Assure compliance with FTA requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements.
- § Request and withdraw Federal cash only in amounts and at times as needed to make payments that are immediately due and payable.
- § Account for project property and maintain property inventory records that contain all the elements required.
- § Arrange for an annual independent organization-wide audit in accordance with OMB Circular, A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

- § Prepare and submit force account and cost allocation plans prior to incurring costs if seeking reimbursement for these costs. Update and retain these approved documents for FTA upon request and during Triennial Review.

Mr. Chairman, it is important to emphasize elements of these last two points. First, each grantee must arrange for an annual independent organization-wide audit in accordance with OMB Circular A-133, which provides comprehensive information on the elements that such an audit must include. Second, the final point mentions the FTA Triennial Review. FTA is required by law to perform reviews and evaluations of urbanized area formula program grantees to evaluate formula grant management performance and grantee compliance with FTA and other federal requirements. The reviews must be conducted for each formula grant recipient at least once every three years with the results integrated into FTA's grant management functions. The reviews are conducted by FTA staff and outside contractor teams following an annual work program. Desk reviews are followed by a site visit. The team documents its findings and recommendations in a draft triennial review report, which is furnished to the grantee for comment before it is released in final form to interested local, state and federal officials.

When appropriate, corrective actions are recommended to resolve grantees' program management deficiencies. FTA monitors the grantee's performance until compliance with all program requirements is achieved. If needed, FTA can invoke sanctions to assure that grantees act to correct any noted program deficiencies. Finally, there are a number of other report and audits required by the FTA in connection with particular activities, including compliance with federal Buy America regulations by means of pre-award and post-delivery audits of affected procurements.

TRANSIT AGENCY AUDIT MISSION AND ORGANIZATION

Because of these many federal, state and local audit and report requirements, as well as for basic business purposes, most larger transit agencies establish an internal audit department within their operation generally to -

- Evaluate the adequacy of the internal control structure and the reliability of operating, accounting and reporting systems and procedures.
- Verify the existence of assets and revenues to ensure proper safeguards for their protection.
- Ensure compliance with laws, regulations, policies, procedures, and rules.
- Investigate reported fraud, theft, waste, abuse, etc., and coordinate efforts to prevent and deter future occurrences.

Internal auditing is an independent, objective assurance activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk

management, control, and governance processes. Generally, the audit staff have full and unrestricted access to all activities, records, data files, personnel and physical properties relevant to the performance of their audits and investigations. Internal audits cover fare collection practices, capital assets, personnel performance, ethics issues involving fraud and waste allegations. While practice varies, the audit function often is a separate department within the transit agency. Depending on the organization, auditors report to the CEO, or to the Board, or in some cases to both. An emerging trend appears to be that more are reporting to the Audit Committee of the Board and not to the CEO. Of course essentially every transit system is expected to have an external audit as well, an annual audit by outside auditors that independently reviews a transit system's internal controls and organization much as companies are subject to annual external audits.

USE OF INSPECTOR GENERAL FOR OVERSIGHT

Mr. Chairman, in your letter asking us to testify on this matter, you asked whether inspectors general are often used by transit agencies to provide oversight. A number of the largest public transit systems do have an independent inspector general function, including the New York Metropolitan Transportation Authority, the Chicago Transit Authority, and the Los Angeles County Metropolitan Transportation Authority.

In each case the inspector general (IG) is independent and reports to the transit board or to some other entity. The IGs and their staffs generally have full, free and unrestricted access to all of the transit agency's records, reports, audits, reviews, and other information. Usually the inspector general office prepares reports, audits and related information.

By way of example, the Office of the Inspector General (OIG) of the New York Metropolitan Transportation Authority (MTA) was created in 1983 as an independent oversight agency to review the operations of the MTA and its constituent agencies. Appointed by the Governor, State of New York, with the advice and consent of the State Senate, the Inspector General reports to the Governor, the legislature and the public, and serves as an ex-officio member of the New York State Safety Oversight Board. The Inspector General is assisted in his work by a Management Advisory Board.

The New York MTA OIG monitors the activities of the MTA in providing a safe, reliable, clean and affordable public transportation system in the metropolitan New York City area, and works to reduce fraud, abuse and waste throughout that system. Through its investigations, audits, and other studies, OIG focuses on the MTA's performance and seeks to enhance the efficiency, effectiveness, safety, and quality of its agencies' operations.

The Los Angeles County MTA's (LACMTA) OIG was established in 1993 in the same legislation that created the agency. The OIG is an independent and objective organization reporting directly to the LACMTA Board of Directors. The OIG achieves its objectives through the leadership team of an Inspector General, Deputy Inspector General for Audits, Deputy Inspector General for Investigations, and a team of experienced, and highly-skilled auditors and investigators.

The mission of LACMTA's OIG is:

- To conduct investigations and audits relating to the programs, operations, and contracts of the agency.
- To detect, investigate, deter, and prevent fraud, waste, and abuse in agency programs, operations, and resources.
- To provide the LACMTA Board and the CEO with independent, fair, and objective evaluations and appraisals relating to utilization of agency resources, adequacy of internal controls, and performance effectiveness.

The Inspector General at the Chicago Transit Authority (CTA) is charged with promoting effectiveness and integrity in the administration of CTA programs and operations. The Inspector General also receives and registers complaints and information concerning waste, fraud and abuse within the CTA; investigates and audits the conduct and performance of CTA officers, agents and contractors acting on the CTA's behalf; and reports the results of investigations and audits to the Transit Board, among other duties.

A related transportation entity, Amtrak, has an Inspector General as well. Amtrak's Office of Inspector General or Department of Internal Affairs was formed under the provisions of the Inspector General Amendment of 1988. The Act required that Amtrak, as a "designated federal entity," establish an Office of Inspector General to supervise and conduct audits and investigations of fraud, waste, and abuse affecting the company. Internal procedures were promulgated to reflect the scope and authority of the Inspector General as provided for in the Inspector General Act as amended. Amtrak's IG reports only to the Chairman of Amtrak's Board of Directors. The OIG provides periodic reports to the Board of Directors, notifying it of significant audit and investigative activities. The OIG has full access to all company records, property, and other material related to the performance of all duties. Management is ultimately responsible for ensuring that audit findings and investigative reports are properly acted upon, and all management personnel are required to respond to recommendations within 30 days from receipt of the audit or investigative report unless extensions are granted.

Finally, Mr. Chairman, I should also note that the Southeastern Pennsylvania Transportation Authority, which serves the greater Philadelphia region, has an Inspector General office that is an internal function that reports to the General Manager rather than to the agency's Board.

CONCLUSION

Mr. Chairman, that concludes my testimony. I would be pleased to answer any questions you may have or supplement my testimony with additional information as you might desire.